No. 80-332

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JAMES A. RHODES, ET AL., *Petitioners,*

v.

KELLY CHAPMAN, ET AL., *Respondents.*

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF RESPONDENTS

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QUESTION PRESENTED

Whether The Double Celling Of Prison Inmates In The Conditions Found To Exist At The Southern Ohio Correctional Facility Violates The Eigth Amendment.

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Bennett, J., *Of Prisons and Justice* 11, 16, 23

Cohen, A., Cole, G. & Bailey, R., *Prison Violence* 13, 16, 18, 19

Commission on Accreditation for Correctional Institutions, *Manual of Standards for Adult Correctional Institutions* 17, 20

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DeWolfe & DeWolfe, *Impact of Prison Conditions on the Mental Health of Inmates,* 1979 S. Ill. U.L.J. 497 9

Economist, The (February 9, 1980) 23

Fox, V., *Violence Behind Bars* (1956) 13, 23

Gilbert, *Observations About Recent Correctional Architecture,* 1 Prison J. 7 (1971) 19

Table of Authorities Continued

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Goldfarb, R. & Singer, L., *After Conviction* (Touchstone ed. 1973) 19

Hall, E., *The Hidden Dimension* (1966) 19

Kwartler, R., *Behind Bars: Prisons in America* (Vintage Books ed. 1977) 13

Nagel, W., *The New Red Barn: A Critical Look at the Modern American Prison* (1973) 22

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Sykes, G., *The Society of Captives: A Study of a Maximum Security Prison* (1958) 7

United States Justice Department, *Federal Standards for Prisons and Jails* 17, 19-20

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BRIEF OF RESPONDENTS

DECISIONS BELOW

The record of the affirmance by the United States Court of Appeals for the Sixth Circuit of the judgment of the district court is now set forth at 624 F.2d 1099.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the Eighth Amendment to the United States Constitution, the Fourteenth Amendment to the United States Constitution, and Title 42, Section 1983, United States Code, set forth in the Petitioners' Brief, respondents cite the following constitutional and statutory provisions:

Amendment I, United States Constitution

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech,

or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Title 29, Section 2929.11(B)(1)

Terms of imprisonment for felony shall be imposed as follows:

(1) For a felony of the first degree, the minimum term shall be four, five, six or seven years, and the maximum term shall be twenty-five years;

STATEMENT OF THE CASE

The district court based its decision upon a careful review of the totality of conditions at the Southern Ohio Correctional Facility (hereinafter SOCF) and found that the prolonged double celling of two men into a 63 square foot cell, for long periods of time each day, had caused inmates to suffer physical and mental injury, served no penological purpose, and violated standards of civilized decency. The court's thorough opinion was based upon five days of testimony by numerous prison officials, a prison psychologist and psychiatrist, prisoners, and correctional experts, several depositions, 40 exhibits, a view of the prison itself, and concluded with detailed findings of fact and law.

The Respondents accept the statement of the case submitted by Petitioners except for the following errors and omissions:

Prisoners at SOCF are long term. *Chapman* v. *Rhodes*, 434 F. Supp.1007, 1011 (S.D. Ohio 1977). Two-thirds are serving sentences of life or for first degree

felonies, which are punishable by a minimum of four years and a maximum of twenty-five years incarceration. Ohio Revised Code §2929.11(B)(1). The remaining prisoners were held in maximum security custody because of problems of adjustment in other institutions. Tr.1198.[1]

SOCF opened in 1972 and reached its design capacity during 1975. 434 F. Supp. at 1011. At the time of trial in May, 1977, the population of the institution was 38% over design capacity. The trial court thus considered overcrowding and double celling against a "background of relative permanence." *Id.* at 1021.

The cells were designed, built, and rated to house one man. 434 F. Supp. at 1021.

Double celling reduced the square footage of living quarters per inmate to 30-35 square feet per person. When the floor space required for the bunk beds, the toilet, and other furnishings is excluded, there remain less than 24 square feet per inmate of living space. 434 F.Supp. at 1011.

The trial court found that:"At the best a prisoner who is double celled will spend most of his time in the

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[1] Respondents have used the following abbreviations to refer to the record. Tr., Transcript; P.A., Appendix to Petition for Certiorari; J.A., Joint Appendix; Pl. Ex., Plaintiffs' Exhibit (including transcript pages at which it was introduced and admitted).

cell with his cell mate." 434 F. Supp. at 1021.[2] A "substantial number" of double celled prisoners spent "all but six hours a week" in their cell and "another substantial number all but four hours a week" *Id.*

"[A] substantial number of the inmates are victims of some form of emotional or mental disorder." 434 F.Supp. at 1017. Approximately 15% of the inmates could be expected to suffer from schizophrenia, persons particularly prone to violence engendered by close quarters. No classification system for assigning cell mates existed and prisoners had no option with respect to their cell mate. *Id.* Psychological and social services were "substantially denied to a number of inmates due to the double celling." *Id.* at 1016. "Medical staff ha[d] not been increased since the days of single celling. The situation [did], of course, leave much to be desired. . ." *Id.*

". . .[T]here [were] not enough jobs to go around" and "many inmates assigned to jobs work[ed] only an

---

[2] Petitioners apparently challenge the court's finding on how much time inmates had out of cell. Under prison regulations relied upon by Petitioners, double celled inmates had the option of being out of their cells for substantial parts of the day. In practice, however, the court found that "the evidence in this case establishes" that such inmates were out of their cells for only ten hours a day. *Id.* at 1013. This finding adopted that calculated by the Petitioners in their proposed findings of fact submitted after the trial. Defendants Proposed Findings of Fact and Conclusions of Law, filed June 10, 1977.

hour or so a day." 434 F. Supp. at 1015. "Double celling. . .obviously interfered with studying." *Id.*

Five alternative plans were submitted by the Petitioners but rejected by the trial court. Two of the plans would have required legislative approval of new construction, but that approval had not been granted. Two of the plans would have required dormitory housing which all witnesses agreed to be inappropriate in a maximum security institution. A plan that would have allowed increased population and provided that all double celled inmates be assigned to out of cell activity was rejected because the court found:"[A]s we have seen, the greater the population, the less meaningful the job and school assignments." P.A. 40. In any event, the plan dealt with only one of the factors relied upon by the court — time out of cell.

The trial court found that a reduction of 25 persons per month would not cause undue hardship. J.A. 35. In fact, the Petitioners reopened the maximum security penitentiary which SOCF was to replace. Tr. 1150-51; *Stewart* v. *Rhodes*, 473 F. Supp. 1185, 1186 (S.D. Ohio 1979).

SUMMARY OF ARGUMENT

"[O]vercrowding in prisons. . . has been universally condemned by penologists." *United States* v. *Bailey,* 444 U.S. 394, 415-16 n.11(1980). "There can be little question that our prisons are badly overcrowded and understaffed and that this in large part is the cause of many of the shortcomings of our penal system. This,

however, does not excuse the failure to provide a place of confinement that meets minimal standards of safety and decency." *Id.* at 424 (Blackmun, J., dissenting).

The Southern Ohio Correctional Facility, a maximum security penitentiary, was, at the time of trial, 38% overcrowded with 2,300 prisoners locked into cells designed for 1,620. The trial court considered the extensive double celling, the size of the cells, the length of time in cell, the duration of the sentences being served, the incidence of mental and emotional illness, the idleness, the lack of ameliorative services, and the violence and found a totality which caused "physical and mental injury from long exposure." 434 F. Supp. at 1020. The Petitioners' assertion that the trial court employed a *per se* standard to ban double celling is a misstatement of the decision. The court specifically held "we certainly are not concluding that all double celling in any 60 square foot cell is beyond the ambit." *Id.* at 1021. The judgment from which this appeal is taken did not, in fact, ban all double celling, but rather limited population to 1,645, a number which would allow double celling for temporary reasons. The Court of Appeals ruled, "we do not read the opinion as holding that double celling is unconstitutional under all circumstances." P.A. 2.[3]

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[3] Because the issue in the Petition for Certiorari was framed in terms of the constitutionality of double celling, the Court may wish to consider disposition of the writ as improvidently granted. *See Belcher* v. *Stengel*, 429 U.S. 118 (1976).

Rather than establishing a *per se* rule, the court determined the constitutionality of conditions at SOCF by "ascertaining the 'totality of the circumstances' of the particular case," 434 F.Supp. at 1019, and held:"At this time and on this present record, this Court is not in any position to do aught but conclude and declare that double celling at Lucasville is federally unconstitutional." *Id.* at 1021. Respondents submit that the trial court employed the proper test, and that its findings based on that test are supported by the evidence and should not be disturbed.

The Eighth Amendment bans punishments which transgress today's "broad and idealistic concepts of dignity, civilized standards, humanity, and decency." *Estelle* v. *Gamble*, 429 U.S. 97, 102 (1976). It "proscribes more than physically barbarous punishments." *Id.* To restrict the Eighth Amendment to "the so-called necessities of life" ignores the far more meaningful reach of that Amendment:

> [A] standard of living constructed in terms of so many calories per day, so many hours of recreation, so many cubic yards of space per individual, and so on, misses the central point when we are discussing the individual's feeling of deprivation, however useful it may be in setting minimum levels of consumption for the maintenance of health.

G. Sykes, *The Society of Captives: A Study of a Maximum Security Prison* 68 (1958).

If, however, Petitioners' proposed test of minimum necessities as the measure of the scope of the Eighth

Amendment is accepted, conditions at SOCF were properly found to be unconstitutional. The housing of two men in cells which provided 30-35 square feet of living space or less than 24 square feet of walking space per person violated the requirement that a State provide reasonably adequate shelter to those it incarcerates.

Finally, reliance on *Bell* v. *Wolfish*, 441 U.S. 520 (1979), is misplaced by Petitioners. That decision is not only distinguishable on both its facts and law, but it is also supportive of the decisions by the courts below.

In sum, whether a totality of conditions or minimum necessities standard is used, the overcrowding and double celling at SOCF violate the Eighth Amendment, and the decisions of the district and appellate courts should be affirmed.

ARGUMENT

I Conditions At SOCF Caused Mental And Physical Injury

Petitioners have not challenged the findings of fact made by the trial court. Five factors were emphasized, and these factors amply support the court's ultimate finding of cruel and unusual punishment.

The first factor was that the long term sentences being served by SOCF inmates "accent[ed] the problems of close confinement and overcrowding." 434 F. Supp. at 1020. "Sixty-seven per cent of the inmates were serving either life or first degree felony sentences." *Id.* at 1011.

The rest were at SOCF due to problems with adjustment to prison life. Tr. 1198. These factors focus on the maximum security nature of SOCF. "Maximum security prisons by their very nature and social purpose result in extremely high levels of stress. Confinement is long, involuntary, and unplanned." DeWolfe & DeWolfe, *Impact of Prison Conditions on the Mental Health of Inmates,* 1979 S.III. U.L.J. 497, 520.

The problems of double celling maximum prisoners was described by a former SOCF psychologist:

> Q. How would you compare the effects of double celling at a maximum security institution, specifically SOCF, with a medium security institution or a lesser security institution?
>
> A. Well, you have a different inmate population, for one thing. Most of the inmates there — I wouldn't say most, but at least a large percentage of the inmates there at Lucasville are there because they have been unable to cope with the inner personal situations, you know, in the structure of other institutions.
>
> When you force these people close together, its more difficult I think for them to deal with that kind of a situation than it is with the inmates someplace else, say at the [medium security institutions], who haven't directly manifested such an inability to keep with inner personal living, you know, with proximity of other people. Tr. 460-461.

These problems are exacerbated by the fact "that a substantial number of the inmates are victims of some form of emotional or mental disorder." 434 F.Supp. at 1017. "[I]n a maximum security prison of any size some 15% of the inmates may be expected to be schizophrenic and that that type is particularly prone to violence engendered by 'close quarters' and 'frustrations'." *Id.* at 1017. One incident illustrates this point:

> At approximately 11:55 A.M. on the above date, while I, Officer M. Ticer was working K-4 block (voluntary idle), I observed Inmate Howard put a typewriter and a brown paper bag outside of cell 14. Inmate Howard then came up the range carrying a housecoat over his arm and his night lamp in his hand. When asked what he was doing he stated, "that stuff on the range is my celly's. I have moved him out, he is not to come back in my cell for any reason. Those are orders from above. . ."
>
> Pl. Ex. 30 (unpaginated)(4-22-76) Tr. 17, 18.

Dr. Lindner, an expert psychiatrist who was employed as Director of the Receiving Unit of Lima State Hospital for the Criminally Insane, explained at trial what schizophrenia means for double celling in a maximum security context:

> A schizophrenic individual has a tendency to distort perceptions in such a way that the activities of other persons are frequently perceived as threatening, even when they are not intended as such. As a result he is very likely to feel threatened by another individual in the same confined space with him and is much

> more likely to act out towards this individual in a mistaken feeling that he must protect himself. Tr. 432

SOCF was particularly affected because transfers from Lima State Hospital were accepted and given no separate treatment, but rather assigned cells routinely with other inmates. Jago Dep., Vol. 2, 182-83. A former SOCF psychologist described the impact of this practice:

> Many were fearful of being housed together in a cell with someone who had just recently been returned from Lima State Hospital. They didn't understand some of the bizarre behavior they observed Tr. 457.

The very nature of the inmate population at SOCF and all maximum security institutions aggravates the problems caused by double celling. Maximum security prisons contain the "assaultive, aggressive, and psychopathic." J. Bennett, *Of Prisons and Justice* 172 (1974). When such inmates are "[c]rowded into a small area with men who have long records of physical assaults, thievery, and so on (and who may be expected to continue in the path of deviant social behavior in the future)," the conditions produce violence. G. Sykes & S. Messinger, "The Inmate Social System," in L. Orland, *Justice Punishment, Treatment: The Corrections Process*, 172, 173 (1973).

The trial court found that violent incidents at SOCF increased as the inmate population increased. 434 F. Supp at 1018. The same increase was found for "[h]omosexuality, enforced and consensual, extortion and criminal activity". *Id.* at 1020. This increase

occurred, of course, in a constant physical space. The court concluded: "It is simply impossible to stamp out crime and violence in a place where one is the most apt to expect it — maximum security prison." *Id.* at 1019-20. The Associate Superintendent for Custody described violence at SOCF to Ohio legislators:

> When an inmate fails to produce either one of these commodities [money or sex], the extortion group will threaten him with bodily harm or force him into homosexual activity with one or possibly all the members of the group. The common expression is "Choose a man or die." Often after these weaker inmates are forced into homosexual activity they are sold to other inmates for money, commissary, etc. Pl. Ex. 2, Tr. 13, 18

Summaries of incidents, prepared for Plaintiffs' Exhibits 28-30, which the court found to bespeak credibility, are replete with examples of violence and "acting out" conduct. Taking just the last week reported prior to trial, there were six reported incidents of force between inmates including an incident where one prisoner hit his cell mate in the mouth, an incident where a prisoner was stabbed in the stomach by two other inmates, and a fight among four prisoners during which one person's head was used to break a window in a day room. Pl. Ex. 29, p. iv, Tr. 17-18. A summary of internal memoranda seeking restricted placement for particular inmates showed inmates being isolated because of sex acts with other inmates, because the administration was unable to provide protection in other parts of the institution, and because individuals were reputed to be

gang leaders engaging in drug traffic, homosexual prostitution, extortion, or assault on other inmates on a contract basis. Pl. Ex. 21, p. i-iii, Tr. 16, 18.

Experts agree that overcrowding and double celling increase aggressiveness and break down normal social behavior. *See e.g.*, R. Kwartler, *Behind Bars: Prisons in America* 8 (Vintage Books ed. 1977). Because "[i]nmates are often emotionally unhealthy individuals," overcrowding can lead to riots. American Correctional Association, *Causes, Preventive Measures, and Methods of Controlling Riots and Disturbances in Correctional Institutions* 63 (1970)(hereinafter "Riots' Causes").

"Both rioting and nonriot resistance occurred more often in maximum-security facilities where inmates were overcrowded and idle." R. Wilsnack, "Explaining Collective Violence in Prisons: Problems and Possibilities," in A. Cohen, G. Cole & R. Bailey, *Prison Violence* 61, 69 (1976).

To reduce violence, there must be a diminution of "the opportunities that enable one inmate to attack another." J. Jacobs, "Prison Violence and Formal Organization," in A. Cohen, *et al., supra,* at 79, 86. One man cells allow homosexuality to be "somewhat controlled or held to a minimum." V. Fox, *Violence Behind Bars* 66 (1956). Mr. Arnold Jago, the Superintendent of SOCF, testified: I'd prefer to have individuals in individual cells . . . Not so much violence. It's easier individual control." Jago Dep., Vol. 2, pg. 17.

The second factor the trial court focused on was the capacity at SOCF. The institution was designed and built to house and serve 1,600 inmates. At the time of trial, it was "holding some 38% more people than the designers and builders intended it to." 434 F. Supp. at 1020. The effect on inmates was pronounced: "Overcrowding necessarily involves excess limitation of general movement as well as physical and mental injury from long exposure." *Id.* The institution's capacity to meaningfully employ or educate inmates was overtaxed, resulting in extensive idleness for inmates and increased time in cell.

The trial court found "that the testimony that there are not enough jobs to go around is credible, as is the testimony to the effect that many inmates assigned to jobs work only an hour or so a day." 434 F. Supp. at 1015 (footnote omitted). At SOCF, job opportunities remained static as the institutional capacity was surpassed. Fifteen inmates were assigned to a job ten had done before. Jago Dep. Vol. 2, p. 85. The opportunity for education had "been substantially delayed since double celling" and "obviously interfered with studying." 434 F. Supp. at 1015. At the time of trial, more than 700 inmates were completely idle. *Id.*

The expert psychiatrist described what idleness means for prisoners:

> The presence of idleness would result in a decrease in opportunities for the inmates to engage in any form of activity which would allow them to sublimate their emotions, that is to displace them

> into socially approved behavior before they result in aggressive outbursts.
>
> Tr. 431.

Two experts relied upon by Petitioners, Texas Corrections Director Estelle and Federal Bureau of Prisons Director Carlson, testified that maximum security prisoners should be engaged in full-time meaningful activity. A psychologist with the Federal Bureau of Prisons called by Petitioners testified:

> The most negative thing about being in prison, I think is idleness. If inmates are not permitted or there is no work for them to do or they are not permitted to work, I think this is probably the most detrimental thing you can do. We try to avoid it every way we can.
>
> Levinson Dep. p.13.

One former SOCF social worker testified about spending hours trying to get prisoners jobs. She explained that jobs were necessary both to help the prisoner keep himself together and as evidence of rehabilitation for the parole board or transfer committee. "And often they would ask me, you know, 'What can I do? You know, I don't want to blow my cool. I don't want to cause problems, you know. Can I get away from my cell mate?'" Tr. 662-63. Both psychological and social work services had "been substantially denied to a number of inmates." 434 F. Supp. at 1016. In two periods, adequate dental care had been denied. *Id.* Medical care also was severely taxed. *Id.*

This absence of jobs, programs, and care caused by overcrowding has a devastating effect on prisoners. "Of

all prison conditions, the most damaging may be the stupefying monotony and boredom of prison life." T. Wicker, *A Time to Die* 106 (Ballentine Books ed. 1976). James V. Bennett has criticized prisons where inmates "remain locked in cells or quarters hour after hour and day after day with nothing to do." J. Bennett, *supra,* at 172. Being locked in cells for over 14 hours a day (including sleeping time) renders prison life "for the most part monotonous and meaningless, and only those with mental and moral stamina can escape the deteriorating and often degenerating effects of the long days, months and years of their incarceration." A. MacCormick, "Adult Correctional Institutions in the United States," in L. Orland, *supra* at 133, 138. This has led to adoption of a "correctional maxim that idleness breeds discontent and disruptive behavior." E. Megargee, "Population Density and Disruptive Behavior in a Prison Setting," in A. Cohen, *et al., supra*, at 135, 139. Absent "interesting and satisfying work" or other outlets, "emotional stability" is threatened. *Riots' Causes* at 11.

The third factor the trial court identified was the amount of space provided per inmate: "double celling reduces the square footage of living quarters per man to something in the neighborhood of 30-35 feet at best." 434 F. Supp at 1021. The actual walking, rather than living, space was less: cells "contain[ed] the following furniture and equipment: one cabinet-type night stand, one wall cabinet, one wall shelf, one wall mounted lavatory with hot and cold running water and steel mirror, one

china commode which is flushed from inside the cell," and a bed three feet by six feet, eight inches. *Id.* at 1011. These reduced floor space to 21-24 square feet per double celled inmate.

Accepted professional standards uniformly rejected 30-35 square feet per inmate. The recently pronounced *Federal Standards for Prisons and Jails,* formulated by the United States Department of Justice, recommended that "All cells and detention rooms rated for single occupancy house only one inmate;" Standard 2.02, and single cells "have, at a minimum, 50 square feet of floor space," Standard 2.03. Long-term facilities where over ten hours a day is spent in a cell must have "at least 80 square feet" of floor space, Standard 2.04, and multiple-occupancy cells or rooms must provide "a minimum of 60 square feet of floor space per inmate." Standard 2.05. The Commission on Accreditation for Corrections requires in its *Manual of Standards for Adult Correctional Institutions* that there be "one inmate per room or cell, which has a floor area of at least 60 square feet" for inmates locked up ten hours or less and "at least 80 square feet of floor space" for longer confinement. Standard 4142. *Accord*, The American Correctional Institution, "75 square feet is the minimally acceptable standard;" the National Sheriffs Association, 70-80 square feet; the National Council on Crime and Delinquency, not less than 50 square feet floor space, and the United States Army, 55 square feet. 434 F.Supp. at 1021; the American Public Health Association Standards for Health Services in Correctional Institutions (1976)(60

square feet per inmate); The National Clearinghouse for Criminal Justice Planning and Architecture (and, through it, the Law Enforcement Assistance Administration)(70 square feet of individually designated living area); National Advisory Commission on Criminal Justice Standards and Goals (80 square feet per person); the Model Sentencing and Corrections Act, approved by the National Conference of Commissioners on Uniform State Law, 1978 (70 square feet); American Institute of Architects (70 square feet per prisoner); and The Building Officials Conference Code of America Building Code (70 square feet) cited in *Ruiz* v. *Estelle*, No. H-78-987 (S.D. Tex. 1980) (Slip Op., p. 210-211 n. 21).

Further there is no penological justification for double celling. Every prison administrator who testified stated a preference for single celling. (Dr. Adam McQuillan, former warden at Rikers Island, Tr. 48; Texas Corrections Director Estelle, Tr. 513; Federal Bureau of Prisons Director Carlson, Dep. 19; Federal Bureau of Prisons Psychologist Levinson, Dep. 27; former prison official in Kentucky and Ohio Dr. Burns, Dep. 29; former Nebraska and Louisiana warden Maurice Siegler, Dep. 70; and Superintendent of SOCF Jago, Dep., Vol. 2, p.17).

"[T]here is a clear association between restirctions on personal space and the occurrence of disruptive and aggressive behavior." E. Megargee in A. Cohen, *et al., supra,* at 141. One commentator has noted research that "aggressive people required more space rather than less, that when a person comes within *X* number of feet of

them their whole nervous system begins to get excited." W. Nagel in A. Cohen, *et al., supra*, at 146. "Recent scientific studies have shown that marked, demonstrable physiological and psychological damage is done to animals . . . overcrowded beyond permissible territorial imperatives." R. Goldfarb & L. Singer, *After Conviction* 389 (Touchstone ed. 1973). *Cf.* R. Sommer, *Personal Space: The Behavioral Basis of Design,* (1969); E. Hall, *The Hidden Dimension* (1966); R. Ardrey, *The Territorial Imperative* (1968). By 1980, the American Correctional Association had adopted this view: "In living quarters, the private room with outside window establishes individuality and territory and is considered the best approach." *Riots' Causes* at 58 (emphasis in original).

The fourth factor used by the court was the amount of time spent by inmates locked in their cells with cell mates. "At the best a prisoner who is double celled will spend most of his time in the cell with his cell mate. A substantial number must so spend all but six hours a week and another substantial number all but four hours a week." 434 F. Supp. at 1021. Due to overtaxed facilities, most double celled inmates were out of their cells "some ten hours a day." *Id.* at 1013.

The impact of double celling on prisoners flows not simply from confinement in a small space but rather from the time daily spent in cells and duration of such conditions. Gilbert, *Observations About Recent Correctional Architecture,* 1 Prison J. 7, 11 (1971). *See also,* U.S. Justice Dept., *Federal Standards for Prisons and*

Jails, Standard 2.04 (1980)(longer time in confinement, more space is necessary); Commission on Accreditation for Corrections, *Manual of Standards for Adult Correctional Institutions,* Standard 4142 (same). Lock-up of over 14 hours a day, including sleeping time, has a deteriorative effect on inmates' health. A. MacCormick, *supra*, at 138.

Even Petitioners' expert, Texas Corrections Director Estelle, was emphatic about the harmful impact of long-term confinement of two men at SOCF in cells designed for single occupancy:

> Q. . . . Would it be your opinion that those same cells, if they housed men for 23 hours a day, with all their personal belongings would be adequate?
>
> A. For over a prolonged period of time, under those circumstances, that would not be adequate. Tr. 566

Accord, Ohio Corrections Director Denton, Tr. 1053.

Extensive time in cell for long periods was particularly harmful because at SOCF double celling was done without classification or choice. One expert testified:

> And doubling two people that may not get along, may hate one another, into one facility and without giving them a chance to study if he is so inclined, to read, to engage in some kind of hobby, to just be in a cell, to have a little solitude for himself, to have a little place where he can go and think things over, is not my idea of getting ready for parole

> board or getting ready to go out in free society as a better person.
>
> Tr. 56.

The former SOCF psychologist explained the impact of double celling in a small space:

> Well, mostly what was called to my attention was the privacy in terms of sexual behavior. You have an inmate who is, you know, closed awaP from any type of normal sexual outlet and you are not even providing him with the opportunity to masturbate in privacy. It's a situation where, you know, sexual tensions can build up and they can flare up into aggressive behavior.
>
> Tr. 465.

Inmates testified about the small grievances which became major problems of life:

> Well, this cellie that I have now, I have nothing against playing a harmonica, but the guy don't know how to play one and it drives me up the wall; plus he has a habit of clearing his teeth, cleaning them, whatever; I mean clicking sound. And that's a continuous thing. And in the evening when you are trying to sleep he is doing setups in the bed. It's just little things that irritate a man.
>
> Tr. 196.

The final factor distinguished by the trial court was the "relative permanence" of the double celling and overcrowding at SOCF. 434 F. Supp. at 1021. The court held that "[d]ouble celling in 60-foot cells is undoubtedly

permissible as a temporary measure, but we deal not with anything temporary here." *Id.*

The court noted that beginning in 1975, prison populations rose faster than available housing units. The Director of the Department warned the state legislature repeatedly of the problem, stating in his annual report for 1976: "Ohio's existing prison system is simply not equipped to handle the population growth projected for the rest of the 1970s . . . Only the construction of several new correctional facilities will enable Ohio's prison system to provide sufficient housing for the anticipated growth in the inmate population." Pl. Ex. 17, p. 7-8, Tr. 15, 18. Without such new construction, or the intervention of the district court, double celling would continue to increase. Jago Dep. Vol. 2, p.70.

When double celling and overcrowding combine for month after month "[t]he most obvious consequences are high tension, inmate anger, rampant violence, and homosexuality. What may not be obvious, but is in subtle ways more damaging, is every inmate's consequent loss of dignity, privacy and status as a separate and individual man or woman." T. Wicker, *supra,* at 109. These permanent conditions of custody "involve profound attacks on the prisoner's self-image or sense of personal worth, and these psychological pains may be far more threatening than physical maltreatment." G. Sykes & S. Messinger, *supra*, at 172. With double celling in an overcrowded institution "privacy and human dignity are relentlessly sacrificed." W. Nagel, *The New Red Barn: A Critical Look at the Modern American Prison* 66 (1973).

As the American Correctional Association has noted, "[t]hat man is responsive to his physical environment is clearly recognized and demonstrated in the social sciences field." *Riots' Causes* at 49. Long term doubling up of cells designed for one prisoner and other overcrowding have been root causes of riots. J. Bennett, *supra*, at 171 (Jackson, Mich.); T. Wicker, *supra*, at 6 (Attica, N.Y.); V. Fox, *supra*, at 304-06 (Jackson, Mich.); *The Economist* 31 (Feb. 9, 1980)(Santa Fe, N.M.); Serrill & Katel, "The Anatomy of a Riot," *Corrections* 7 (Apr. 1980) (Santa Fe, N.M.). In the New Mexico riot, which left 33 inmates dead and 200 others beaten and raped, negotiation narrowed inmate demands to five, one of which was an end to double bunking in a cell block. *Id.* at 20.

II The Trial Court Utilized The Correct Test Of Totality Of Circumstances

The test employed by the trial court and affirmed by the Sixth Circuit for determination of the constitutionality of conditions at SOCF was whether the totality of conditions violated the Eighth Amendment. This is the test that was approved in *Hutto* v. *Finney*, 437 U.S. 678 (1978), where the trial court's imposition of a thirty day limit for confinement in segregation cells in the Arkansas prison was affirmed. In this case, Petitioners have assected that the trial court established a *per se* rule banning double celling, despite the court's explicit reliance on the totality of conditions test and the unanimous decision of the Sixth Circuit that the *per se*

test had not been used. The court did not find that any double celling for any period of time in any size cell is unconstitutional, but only that double celling of long term prisoners in 63 square foot cells for fourteen or more hours a day in a maximum security prison and under the conditions existing at SOCF was unconstitutional. No *per se* rule was adopted by the court. Respondents did "not claim that double celling is per se unconstitutional." 434 F. Supp. at 1009. The court analyzed precedent on double celling and noted conditions present or absent at bar. *Id.* at 1019. Finally, the court explicitly declined to rule that double celling was *per se* unconstitutional. *Id.* at 1021.

Just as the effort by the Arkansas Petitioners in *Hutto* v. *Finney* to construct a *per se* rule and then challenge it in this Court was rejected, so should Petitioners' effort here to mischaracterize the holding be rejected. Although there may be institutions where double celling could be so severe as to be unconstitutional *per se*, the combination of the extent of overcrowding, double celling, size of cell, length of time in cell, length of sentence, incidence of mental and emotional disturbance, idleness, lack of ameliorative services, and violence found by the trial court demonstrates that no *per se* holding was made here.

The totality test applied in *Hutto* includes more than the physical necessities of life. The Eighth Amendment "proscribes more than physically barbarous punishments." Estelle v. Gamble, 429 U.S. 97, 102 (1976).

> The Amendment embodies "broad and idealistic concepts of dignity, civilized standards, humanity, and decency, . . ." against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with "the evolving standards of decency that mark the progress of a maturing society," . . . or which "involve the unnecessary and wanton infliction of pain."

Gamble, 429 U.S. at 102-103 (citations omitted). *Accord, Hutto,* 437 U.S. at 685. "Confinement in a prison or an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards." *Id.*

The totality of conditions test requires the trier of fact to evaluate all of the factors which constitute punishment of the prisoner and to determine whether they cause the unnecessary infliction of suffering or are sufficiently serious to transgress modern concepts of decency. The district court here made detailed findings of fact which supported its conclusion of cruel and unusual punishment, facts which are amply substantiated by the evidence.[4] The findings were based on the interplay of factors: the maximum security nature of the prison and the prisoners, the length of sentences being served, the extent of the overcrowding, the design of the cells being used to house two men, the length of time

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[4] The decision here was based upon detailed findings of fact involving most aspects of the prison. Such findings by a trial judge who heard and saw the evidence should be accepted unless clearly erroneous. *See Hutto,* 437 U.S. at 688.

spent in the cell, the indefinite duration of the double celling, the mental and emotional problems suffered by prisoners, the idleness and lack of services prevalent in the institution, and violence found at SOCF.

In double celling and overcrowding cases, the same factors have been measured under the totality of conditions test to determine whether cruel and unusual punishment has been imposed.

> While no single factor is dispositive, the following considerations can be distilled from these opinions as being significant in determining whether overcrowding constitutes cruel and unusual punishment:(1) the duration of the prisoners' confinement; (2) the degree to which the population exceeds the institutions design capacity; (3) the size of the inmates' quarters and the number of hours per day the inmates must spend in those quarters; (4) the effects of the increased population on the prisoners' mental and physical health; and (5) the relative permanency of the crowded conditions.

Capps v. *Atiyeh,* 495 F. Supp. 802, 814 (D. Ore. 1980). *Accord, Wolfish* v. *Levi,* 573 F.2d 118 (2d Cir. 1978), *rev'd on other grounds sub nom. Bell* v. *Wolfish, supra* (two inmates in a 100-150 square feet cell not *per se* unconstitutional, remanded for determination whether two inmates in a 75 feet cell is unconstitutional); *Johnson* v. *Levine,* 588 F.2d 1378, 1380 (4th Cir. 1978)(*en banc*)(double celling unconstitutional in 44 square feet cell); *Newman* v. *Alabama,* 559 F.2d 283, 288 (5th Cir. 1977), *cert. denied,* 438 U.S. 915 (1978) (double celling unconstitutional under existing conditions but not in

newly constructed prisons); *Burks* v. *Teasdale*, 603 F.2d 59 (8th Cir. 1979)(double celling unconstitutional in 47 square feet cell but acceptable in 65 square feet cell because of generally favorable totality of conditions); *Battle* v. *Anderson*, 564 F.2d 388 (10th Cir. 1977)(double celling unconstitutional in less than 60 square feet.)[5]

The totality of conditions test has been consistently applied by appellate and trial courts and has proved to be a workable tool, which requires extensive factual analysis by the district courts to determine whether confinement at the challenged institution violates the Eighth Amendment. The test properly focuses on the seriousness of the alleged constitutional violation rather than on the deference to administrators' expertise appropriate in other contexts.

In a First Amendment context, for example, focus is on the penal interests asserted to outweigh the inmates' constitutional claim. *See, Jones* v. *North Carolina Prisoners' Union,* 433 U.S. 119, 133 (1977). In that case, the Court weighed the substantiality of the penal interests and impact on them of recognizing the inmates' claim. In an Eighth Amendment context, however, the prison administrators' justification for a cruel and unusual punishment is secondary; instead, focus is on the totality of conditions and impact on inmates. A wooden-handled, five foot long, thick leather strap is no

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[5] Petitioners' assertion that the decision here is in conflict with those in other Circuits is thus incorrect.

less cruel and unusual because it directly furthers the important penal interests of discipline and order. *See Jackson* v. *Bishop*, 404 F.2d 571, 574 (8th Cir. 1968). Indeed, "[m]echanical deference to the findings of state prison officials in the context of the eighth amendment would reduce that provision to a nullity . . . "*Spain* v. *Procunier*, 600 F.2d 189, 194 (9th Cir. 1979).

Moreover, the nature of the prison experts' judgment in *North Carolina Prisoners Union* involved conflicting predictions about the dangers of inmate unions. 433 U.S. at 127-28. Here, the expert judgments are in uniform agreement: "single celling is desirable" at SOCF. 434 F. Supp. at 1016. As the court found, it was "the contemplation of officialdom that the facility would, during its useful life, not be called on to house more than 1,600 or 1,700 people and that would be in single cells." *Id.* at 1010.

In fact, the only reason Ohio prison administrators double celled at SOCF was lack of funds. Despite intense lobbying efforts, the administrators were forced to go against their best judgment and act contrary to the SOCF design. But,"[i]t is well established that inadequate funding will not excuse the perpetuation of unconstitutional conditions of confinement." *Smith* v. *Sullivan*, 611 F.2d 1039, 1043-44 (5th Cir. 1980) (citations omitted). The principle was reiterated in *Campbell* v. *Cauthron*, 623 F.2d 503, 508 (8th Cir. 1980):

> One further matter deserves consideration in connection with the cell space and exercise facilities in the jail. The district court appears to have placed

> undue emphasis on the cost of relieving overcrowding and providing exercise opportunities. The court stated, "*[I]n light of the tax money available*, the nature of the court house structure, and all other factors, the physical plant is adequate" . . . As we have previously made clear, if states or counties operate detention facilities, they must meet constitutional standards. (Citations omitted, emphasis in original).

If Ohio is to operate a prison system, it must commit the funds to do so constitutionally. *Pugh* v. *Locke* 406 F. Supp. 318, 330-31 (M.D. Ala. 1976) (history omitted): "[A] state is not at liberty to afford its citizens only those constitutional rights which fit comfortably within its budget." Unless deference is to have a talismanic quality, the overcrowding and consequent double celling at SOCF cannot be justified by reference to prison administrators' informed discretion.

The Sixth Circuit found that "[t]he district court listed in its opinion a number of considerations upon which it based its finding that double celling at the particular prison in question is unconstitutional." at P.A.2. That application of the totality of conditions test should be affirmed.

III. Even Under The "Minimum Necessities" Test, Double Celling At SOCF Violates The Eighth Amendment

Petitioners and their amici have urged this Court to limit the protection of the Eighth Amendment for prisoners to adequate food, clothing, shelter, sanitation,

health care and personal safety. Respondents agree that the Eighth Amendment *at a minimum* requires prison officials to provide each inmate with adequate food, clothing, shelter, sanitation, health care and personal safety. But Respondents urge this Court to reject such a simplistic and primitive concept of the full reach of the Eighth Amendment.

This "minimum necessities" test has no precedential support in this Court. *See Estelle,* 429 U.S. at 102-103; *Hutto,* 437 U.S. at 668. Instead, the "totality of conditions" test has been adopted by this Court and effectuates the Eighth Amendment's evolving standards of decency.

Even under the minimum necessities test suggested by Petitioners, however, double celling at SOCF is unconstitutional. Confining two prisoners for a majority of the day into a cell measuring approximately 65 square feet constitutes inadequate shelter. Contrary to the argument of Petitioners, the Eighth Amendment's requirement of adequate shelter means more than a roof over one's head. It is simply too late in the day for such a restrictive interpretation. "[A] state must provide an inmate with shelter which does not cause his degeneration or threaten his mental and physical well being." *Ramos* v. *Lamm*, No. 79-2324 (10th Cir., Oct 2, 1980)(Slip Op. at 21).

Surely there exists a square footage too small for confinement of a human being. In the instant case, the trial court found that 30-35 square feet of living and

21-24 square feet of walking space was inadequate under the conditions and due to the nature of SOCF.[6] That finding is supported by the following:

(a) SOCF was designed and built by Ohio officials to house one man per cell and accordingly give 63-68 square feet per person. This design showed the will of the people of Ohio as reflected by the Ohio Legislature's approving the SOCF plans. *Cf. Gregg* v. *Georgia*, 428 U.S. 153, 175-76 (1976)(public attitude indicates contemporary value).

(b) All the experts support single celling.

(c) Professional organizations agree that 30-34 square feet is inadequate.[7]

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[6] In *Ruiz* v. *Estelle, supra*, referred to by the State of Texas in its amicus brief, the trial court found double celling in 45 square foot cells to be *per se* unconstitutional. Slip Op. at 190. The court was clearly shocked that prison administrators had not stopped with double celling, but succumbing to population pressures had on occasion tripled and quadrupled inmates in those cells. *Id.* at 8. The Petitioners here have never asserted that they would stop at double celling. Superintendent Jago, asked about ways to handle continued population pressure, testified that they will cross that bridge when they come to it. Jago Dep. Vol 2, p.70.

[7] In an Eighth Amendment case, "contemporary standards of decency" may be manifested by "[m]odel correctional legislation and proposed minimum standards." *Estelle,* 429 U.S. at 103 n.8. In a due process case, however, they do "not establish constitutional minima." *Wolfish*, 441 U.S. at 544 n. 27. At the least, however, the standards are "a factor to be considered in determining

(d) Modern science teaches that territoriality is a basic human need.

(e) Thirty or thirty-five square feet is a very small space, about the size of a large conference table, a small bathroom or a queen size bed.

(f) Confinement in that space occurred for a substantial portion of the day, under maximum security conditions, where inmates were idle and could be psychotic, and violence was a constant threat.

(g) Inmates double celled suffer mental and physical harm.

(h) Other courts have found 50 square feet to be the constitutional minimum for adequate shelter. "No one takes issue with the basic requirement for human decency and this Court holds a failure to achieve that minimal standard contravenes the Eighth Amendment prohibiting cruel and unusual punishment." *Gates* v. *Collier*, 423 F. Supp. 732, 743 (N.D. Miss. 1976), *aff'd*, 548 F.2d 1241 (5th Cir. 1977). *Accord, Battle* v. *Anderson, supra,* at 395.

(i) The long duration of confinement increased the harm caused by the limitation of physical space.

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whether contemporary standards of decency have been met." *Ramos, supra,* Slip Op. at 18 n. 10. The difference between a cruel and unusual punishment and due process test is that the former incorporates contemporary values, which require use of empirical standards. *Compare Ballew* v. *Georgia,* 435 U.S. 223, 231-32 n.10 (1978).

The floor space provided to SOCF prisoners was substantially less than the lowest minimum recommended by anyone. The constitutional definition of shelter must require more.

IV The Decision Of The District Court Was Consistent With This Court's Decision In Bell v. Wolfish

In their Brief, Petitioners have relied heavily on the decision in *Bell* v. *Wolfish, supra*, holding that double celling under the conditions existing at the Metropolitan Correctional Center did not constitute punishment. However, as noted in that decision, as held by the district court, and affirmed by the Sixth Circuit, the facts in the instant case are far different from those in *Wolfish*:

> Respondents' reliance on other lower court decisions concerning minimum space requirements for different institutions . . . is misplaced . . . see . . . *Chapman* v. *Rhodes,* 434 F. Supp. 1007 (S.D. Ohio 1977) . . . The cases cited by respondents concerned facilities markedly different from the MCC. They involved traditional jails and cells in which inmates were locked most of the day. Given this factual disparity, they have little or no application to the case at hand. Thus, we need not and do not decide whether we agree with the reasoning and conclusions of these cases.
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> 411 U.S. at 544 n. 27

Respondents submit that the reasoning and conclusions of the trial court in this case are consistent with

those in *Bell* v. *Wolfish*. A comparison of the facts of the two cases reveals the factual disparities which support the distinction between the two institutions.

Facts In Wolfish	Facts In Chapman
1. At worst, double celling at MCC lasted a very short time. Fifty per cent (50%) of all inmates at MCC were there less than thirty (30) days, seventy-three per cent (73%) were there less than sixty (60) days. Further, of 389 rooms, only 121 had been designated for double bunking and those actually double bunked never exceeded 73 (less than 15%).	1. Double celling at SOCF had lasted two years prior to trial and was to be a permanent condition for the foreseeable future. Further it was envisioned nearly all inmates at SOCF would be double celled. See note 6, *supra*.
2. MCC was a pre-trial detention facility which also housed misdemeanants.	2. SOCF is Ohio's only maximum security facility. 67% of the inmates at SOCF at the time of trial were either serving life sentences or first degree felony sentences (4-25 years). 75% to to 80% of all the inmates at SOCF

FACTS IN WOLFISH	FACTS IN CHAPMAN
	suffered from some sort of personality disorder, including schizophrenia, paranoia, and depression.
3. Each inmate only spent eight hours a day in his cell with his cell mate. The rest of the time the inmates had access to other space.	3. At best a prisoner at SOCF would be in his cell with his cell mate most of the time. A significant minority of the prison population at SOCF would be in their cells with their cell mates all but six hours a week, and some all but two hours a week.
4. The cells at MCC were designed to house one man per cell. The cells measured 75 square feet.	4. The cells at SOCF were designed to house one man per cell. The cells measure approximately 63 and 68 square feet.
5. The Court found nothing approaching genuine privation and hardship.	5. The court found physical and mental injury suffered by the inmates.
6. The officials at MCC felt that they could accom-	6. All the experts and the officials at SOCF agreed

FACTS IN WOLFISH	FACTS IN CHAPMAN
modate the double celling fairly well. This Court in *Bell* urged the lower court to give deference to prison officials in their efforts to run prisons. The Court noted that neither lower court had found the conditions so severe as to constitute punishment.	that double celling at SOCF was a bad idea, it served no penological purpose, it hampered rehabilitation and it made internal prison security tough to maintain. The trial court's conclusion gave deference to these opinions.
7. No finding was made that double celling impaired delivery of services.	7. The Court found from the evidence that 80% of the prisoners at SOCF suffered from some sort of personality disorder. The Court also found that as a result of double celling and overcrowding, the prisoners' existing personality disorders were aggravated and that SOCF's psychological and social worker services were substantially denied to the prison population.
8. "Double bunking may have taxed some of the equipment or particular	8. As a result of the overcrowding at SOCF caused by double celling, there ex-

FACTS IN WOLFISH	FACTS IN CHAPMAN
facilities in certain of the common areas . . . " Because of the short term of confinement, programs were not an issue in the case.	isted widespread idleness. The overcrowding delayed school opportunities, diluted existing job opportunities and caused most inmates to be idle all day. Such idleness was decried by all the expert witnesses and prison officials. Further, it was conceded by all that idleness over a long period of time would create real problems for prisoners who were double celled.
9. Violence was not an issue in the case.	9. Although the trial court ruled that violence at SOCF only increased proportionately and not geometrically to the increase in population, the violence in a maximum security penitentiary contributed to the conditions at SOCF.

This conclusion that *Bell* is not inconsistent with decisions banning double celling in prisons similar to SOCF was reached by the three Circuit Courts of Appeals which have considered the issue. *Burks* v. *Teasdale, supra* at 63; *Chapman* v. *Rhodes, supra* at P.A. 2; *Ramos* v. *Lamm, supra* at 8.

CONCLUSION

In 1910, this Court was asked to interpret restrictively the Eighth Amendment's ban on cruel and unusual punishment. *Weems* v. *United States*, 217 U.S. 349, 356 (1910). The Court rejected an interpretation that "would indeed be as easy of application as it would be deficient in efficacy and power." *Id.* at 373.

Since that time, the Court has not retreated from an interpretation of the Eighth Amendment that is consonant with basic human dignity. Instead, the Court has applied "contemporary standards of decency" to Eighth Amendment challenges against prison conditions. *Estelle* v. *Gamble*, 429 U.S. 97, 103 (1976). In *Gamble,* the Court held that "deliberate indifference" to the serious needs of prisoners violated the Eighth Amendment. *Id.* at 104.

Now, the Court has before it a case involving such deliberate indifference. Petitioners are asking this Court to license the overcrowding of state prisons despite its harmful effects on both prisoners and prison officials and the cruel consequences uniformly recognized by appellate and district courts. When overcrowding contributes to a totality of conditions that inflict harm and

there is no countervailing security or other legitimate justification, courts must intervene. When minimum shelter is not provided and the only defense is lack of funds, courts must intervene.

The Court recognized back in 1910 that "[r]ights declared in words might be lost in reality." *Weems*, 217 U.S. at 373. In America, the reality is that prisons have been a national disgrace. States have abdicated their constitutional responsibility, and federal courts have been forced in the past decade to intervene. Federal courts must continue to "discharge their duty to protect constitutional rights," and no "policy of judicial restraint [can] encompass any failure to take cognizance of valid constitutional claims" arising in America's prisons. *Procunier* v. *Martinez*, 416 U.S. 396, 405-406 (1974).

Prisoners across the country look to this Court for a signal. Will the Eighth Amendment remain a vehicle that the lower courts can use to address the inhumane treatment of prisoners or is the legal avenue of redress to be foreclosed by a restrictive interpretation of that Amendment? The signal must be that a viable remedy exists. The lower courts should be affirmed.

Respectfully submitted,

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